

Senate Bill 265

By: Senator Wiles of the 37th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 20 of Title 45 of the Official Code of Georgia Annotated, relating to
2 personnel administration, so as to define the classified and unclassified service; to provide
3 for the authority of the State Personnel Board and the State Merit System relative to both
4 classified and unclassified service; to modify language relative to these authorizations and
5 definitions to rescind provisions governing interdepartmental transfers; to change certain
6 provisions relating to classified and nonclassified employees; to change definitions relating
7 to personnel administration and classified and unclassified employees; to clarify certain
8 duties of the State Personnel Board; to modify certain duties of the commissioner of
9 personnel administration; to rename the Advisory Council for Personnel Administration and
10 change the manner in which persons become members of the council; to modify certain
11 rights of unclassified service; to clarify certain rights and procedures relating to classified
12 employees; to change public management certificate programs to the Governor's Executive
13 Leadership Institute; to repeal certain penalties for violations of Article 1 of said chapter or
14 rules or regulations promulgated thereunder; to repeal certain rights of merit system officers
15 and employees; to change application of certain provisions relating to counseling to
16 employees; to clarify certain provisions relating to accrual of leave, holidays, and
17 compensation for closing of state offices relative to classified and unclassified employees;
18 to modify the application of certain provisions relating to termination or elimination of
19 classified positions or employees; to delete certain exclusions relating to the performance
20 management system provided for classified employees; to modify the definition of employee
21 relative to random drug testing of employees in high-risk jobs; to modify certain procedures
22 relative to drug testing; to modify and delete certain provisions relating to employee drug
23 testing and drug testing laboratories; to delete and clarify certain provisions relating to
24 analysis of positions warranting established test and testing requirements relative to merit
25 system employees; to provide for related matters; to provide an effective date; to repeal
26 conflicting laws; and for other purposes.

27 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

S. B. 265

- 1 -

SECTION 1.

Chapter 20 of Title 45 of the Official Code of Georgia Annotated, relating to personnel administration, is amended by revising Code Section 45-20-1, relating to purposes and principles relative to personnel administration, as follows:

"45-20-1.

(a) It is the purpose of this article to establish in the state a system of personnel administration which will attract, select, and retain the best employees based on merit, free from coercive political influences, with incentives in the form of equal opportunities for all; which will provide technically competent and loyal personnel to render impartial service to the public at all times and to render such service according to the dictates of ethics and morality; and which will remove unnecessary and inefficient employees. It is specifically the intent of the General Assembly to promote this purpose by allowing agencies greater flexibility in personnel management so as to promote the overall effectiveness and efficiency of state government. To this end, and in accordance with Code Sections 45-20-2 and 45-20-6, all positions filled after July 1, 1996, shall be included in the unclassified service of the state merit system, except as provided in Code Section 15-11-24.3. It is also specifically the intent of the General Assembly that employees in the classified service prior to July 1, 1996, shall continue to be ~~covered~~ employees in the classified service ~~and shall remain subject to the rules and regulations of the state merit system~~ so long as they remain in ~~covered~~ classified positions or as otherwise provided by law. It is further specifically the intent of the General Assembly that state government operate within a framework of consistent core personnel policies and practices across all state agencies and entities and that the state's most valued resource, its employees, be managed in a manner to promote work force productivity and sound business practices.

(b) In order to achieve these purposes, it is the policy of the state that agencies treat all employees, ~~whether included in the classified or unclassified service,~~ in accordance with the following principles:

(1) Assuring fair treatment of applicants and employees in all aspects of personnel administration without regard to race, color, national origin, sex, age, disability, religious creed, or political affiliations. This 'fair treatment' principle includes compliance with all state and federal equal employment opportunity and nondiscrimination laws;

(2) Recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial employment;

(3) Providing equitable and adequate compensation based on merit, performance, job value, and competitiveness within applicable labor markets;

(4) Training employees, as needed, to assure high quality performance and to provide work force skills needed to maintain and advance the state's goals and objectives;

(5) Retaining employees on the basis of the adequacy of their performance, correcting inadequate performance where possible and appropriate, and separating employees whose performance is inadequate; and

(6) Assuring that employees are protected against coercion for partisan political purposes and are prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or nomination for office.

(c) ~~With respect to employees in the unclassified service, it~~ It shall be the responsibility of the state merit system to perform the following functions:

(1) Establish and maintain a state-wide system of pay ranges for all job classes;

(2) Define ~~common~~ job classes, establish associated minimum qualifications for those classes and assign those classes to appropriate pay ranges;

(3) Develop and maintain a common employment application form to be used by all applicants for state employment, which form may be supplemented as necessary by agencies in seeking information about agency job classes;

(4) Serve as the central contact point for all potential employees in order to streamline state-wide recruiting for applicants, to provide for a state-wide applicant data base, to refer applicants to agencies, and make applicant data available to agencies for review and consideration;

(5) Upon request, develop, validate, or develop and validate applicant screening devices being utilized by agencies;

(6) Upon request, administer screening devices on behalf of agencies;

(7) Make employment related training available to agencies and allow agencies the opportunity to provide input into the nature and scope of said training programs;

(8) In consultation with agencies, establish state-wide ~~model standards and processes and best practices~~ criteria for the implementation of rules and policies adopted by the State

Personnel Board which agencies shall use in developing internal processes for classification, compensation, pay for performance, and performance management, including processes involved in defining job classes, establishing and applying associated minimum qualifications, assigning jobs to appropriate state-wide pay ranges, developing and applying applicant screening methods, and measuring worker effectiveness;

(9) Audit agencies' processes as referred to in paragraph (8) of this subsection and report findings annually to the Governor and the General Assembly in conjunction with an annual report on the overall status of the state work force. The state merit system shall not be required to distribute copies of the findings or annual report referred to in this paragraph to the members of the General Assembly but shall notify the members of the

availability of the materials in the manner which it deems to be most effective and efficient;

(10) Serve as consultant to agencies on work force planning and effective work force strategies, provide technical support assistance, and direct services to agencies as requested; and

(11) Maintain and make available to the public at large a state-wide central registry of employment vacancies and job announcements in state government as provided to the state merit system by agencies.

~~(d) With respect to employees in the unclassified service, it shall be the responsibility of the employing agency to perform the following functions:~~

~~(1) Within state-wide human resource standards, processes, and best practices criteria, define agency unique job classes, establish and apply associated qualifications for those job classes, and assign those job classes to pay ranges on an appropriate state-wide compensation plan;~~

~~(2) Allocate agency positions to defined job classes;~~

~~(3) Recruit and screen applicants for job vacancies;~~

~~(4) Develop and administer appropriate job applicant screening devices to ensure the integrity of the hiring process; and~~

~~(5) Develop agency unique policies to ensure compliance with all applicable employment related state and federal laws.~~

~~(e)(d)~~ Subsections Subsection (c) and ~~(d)~~ of this Code section shall not apply to the legislative or judicial branches; or to the board of regents; ~~or to any agency which employed no classified employees as of July 1, 1996.~~

~~(f)(e)~~ Each agency shall develop an annual work force plan according to state-wide criteria and guidelines and shall provide a report of such plan annually to the state merit system for incorporation into the state-wide work force plan to be submitted to the Governor and the General Assembly.

~~(g)(f)~~ In the event agencies do not use a competitive civil service examination to fill some or all of their unclassified positions, it is expressly the intent of the General Assembly that appropriate consideration be given to veterans as defined under Article IV, Section III, Paragraph II of the Constitution of Georgia and Article 2 of Chapter 2 of this title in the filling of job vacancies in this state. Guidelines defining consideration practices shall be developed at the state level. Agencies shall specify agency policies and practices to implement appropriate consideration of military veterans in filling agency job vacancies.

~~(h)(g)~~ The rules of statutory construction contained in Chapter 3 of Title 1, relating to general provisions concerning the construction of statutes, as now or hereafter amended, shall apply to this article."

SECTION 2.

Said chapter is further amended by revising Code Section 45-20-2, relating to definitions relative to personnel administration, as follows:

"45-20-2.

As used in this chapter, the term:

(1) 'Appointing authority' means the person or groups of persons authorized by law or delegated authority to make appointments to fill positions.

(2) 'Classified service' means that employment status conferring rights of appeal, as set forth in Code Sections 45-20-8 and 45-20-9. 'Classified service' includes all only those employees of state departments as defined in this Code section who were in the classified service as of June 30, 1996, and who have remained in classified positions without a break in service since that date; ~~all employees of local departments of health and county departments of family and children services; local employees of the Department of Defense as defined by law; but those officers and employees excluded by this article shall not be included.~~

(3) 'Commissioner of personnel administration' and 'commissioner' mean the chief executive officer of the state merit system who is responsible for administering the state personnel program in accordance with applicable state and federal laws and the policies and rules of the State Personnel Board.

~~(4) 'Confidential position' means a position which by its nature is entrusted with private or restricted information of a type which would preclude it from inclusion in the classified service.~~

~~(5)~~(4) 'Covered employee' or 'classified Classified employee' means an employee who was in the classified service as of June 30, 1996, and who has remained in a classified position without a break in service since that date ~~subject to the rules and regulations of the state merit system.~~

~~(6)~~(5) 'Covered position' or 'classified Classified position' means a position that was classified on June 30, 1996, and that subsequent to June 30, 1996, has not been held by an unclassified employee ~~subject to the rules and regulations of the state merit system.~~

~~(7)~~(6) 'Department' and 'agency' are synonymous and mean all separate and distinct divisions and subdivisions of state government whose heads are legally authorized to appoint employees to positions; but these terms shall not include authorities, ~~and~~ public corporations, the legislative and judicial branches, and the board of regents. 'Department' and 'agency' shall include an agency assigned to a department for administrative purposes and shall also include local departments of public health, county departments of family and children services, community service boards, and units of the Department of Defense with local employees.

~~(8)(7)~~ 'Department covered by the state merit system' means that a department has one or more positions or employees subject to the State Merit System of Personnel Administration. 'Employment at will' means an employment relationship in which either party to the relationship may sever the relationship at any time for any reason other than an unlawful reason.

~~(8.1)~~ 'Interdepartmental transfer' means a transfer from a classified position in one department to a classified position in another department at the same or a higher or lower pay grade. A transfer between units of the Department of Human Resources, including county departments of health and county departments of family and children services, shall not be deemed to be an interdepartmental transfer.

~~(9)~~ 'Permanent employee,' 'permanent status employee,' or 'employee on permanent status' means an employee who has successfully completed a working test period in the class of positions in which he or she has been employed.

~~(10)~~(8) 'Position' means a set of duties and responsibilities assigned or delegated by competent authority for performance by one person.

~~(11)~~ 'Positions of purely policy-making nature' means those positions charged with the primary responsibility and authority for the promulgation, implementation, and enforcement of departmental policies.

~~(12)~~(9) 'Rules and regulations' and 'merit system rules and regulations' mean the governing provisions of the state merit system, as adopted by the State Personnel Board and approved by the Governor which give force and effect to the policies of the State Personnel Board.

~~(13)~~(10) 'State Personnel Board' and 'board' are synonymous and mean the body authorized by Article IV, Section III, Paragraph I of the Constitution of Georgia.

~~(14)~~(11) 'State Personnel Board policies' means those policies adopted by the board and approved by the Governor; which ~~policies~~ describe the goals and objectives of the state personnel program and serve as a basis for the formulation and administration of the merit system rules and regulations.

~~(15)~~(12) 'Unclassified service' means employment at will and includes all employees except those in the classified service as defined in this Code section. ~~the following officers and employees who are excluded from the classified service by this article:~~

~~(A) Members of the General Assembly;~~

~~(B) Persons elected or appointed by the General Assembly, employees of the General Assembly, officials and employees of the Department of Audits and Accounts, and the legislative counsel, except as otherwise provided;~~

~~(C) Officers, officials, and employees comprising the office of the Governor, except those officers, officials, and employees already covered by the state merit system by~~

1 ~~law or executive order, and all employees of the Office of Planning and Budget in the~~
2 ~~position classification policy coordinator, notwithstanding their previous inclusion in~~
3 ~~the classified service;~~

4 ~~(D) Officers, officials, and employees comprising the office of the Lieutenant~~
5 ~~Governor, except as otherwise provided;~~

6 ~~(E) Officers and officials elected by popular vote and persons appointed to fill~~
7 ~~vacancies in elective offices;~~

8 ~~(F) Members of boards and commissions appointed by the Governor or the General~~
9 ~~Assembly;~~

10 ~~(G) The heads of departments or agencies appointed by boards or commissions which~~
11 ~~have been appointed by the Governor or the General Assembly, except where~~
12 ~~specifically included;~~

13 ~~(H) Justices, judges, officials, officers, and employees of the judicial branch;~~

14 ~~(I) Members, the chancellor, and vice-chancellors of the Board of Regents of the~~
15 ~~University System of Georgia and all officers, officials, and employees of the~~
16 ~~University System of Georgia, except those officers, officials, and employees already~~
17 ~~eligible to be covered by the state merit system by law or executive order;~~

18 ~~(J) The officers, officials, and employees of the Department of Transportation, except~~
19 ~~those officers, officials, and employees already eligible to be covered by the state merit~~
20 ~~system by law or executive order;~~

21 ~~(K) The officers, officials, and employees of the Department of Law, except those~~
22 ~~officers, officials, and employees already covered by the state merit system by law or~~
23 ~~executive order;~~

24 ~~(L) A deputy or a confidential secretary when one is required by the head of a~~
25 ~~department, provided that the commissioner shall prescribe the conditions under which~~
26 ~~more than one deputy may be excluded;~~

27 ~~(M) Not more than five positions designated by the head of each department, bureau,~~
28 ~~commission, or agency, including those assigned for administrative purposes only,~~
29 ~~provided that the agency does not presently contain five unclassified, full-time,~~
30 ~~permanent, managerial positions; and provided, further, that the rights of classified~~
31 ~~employees shall not be abridged;~~

32 ~~(N) Members of the military forces of the state while engaged in military service;~~

33 ~~(O) Members of unemployment compensation boards of review and appeals tribunals~~
34 ~~representing employer, employee, and the general public interest;~~

35 ~~(P) State and local officials serving ex officio or emeritus and performing incidental~~
36 ~~duties;~~

1 ~~(Q) Members of other advisory councils, committees, or similar bodies within the state~~
2 ~~merit system;~~

3 ~~(R) Part-time or temporary employees rendering medical, nursing, or other~~
4 ~~professional, scientific, or technical services who are not engaged in the performance~~
5 ~~of administrative duties under the merit system, provided that such employees meet the~~
6 ~~minimum requirements of education and experience established by the appointing~~
7 ~~authority and such employment is approved by the commissioner;~~

8 ~~(S) Prisoner, inmate, student, or patient help working in or about institutions;~~

9 ~~(T) Per diem employees engaged in skilled or unskilled work on a seasonal or~~
10 ~~intermittent basis, provided that the commissioner has authorized such employment;~~

11 ~~(U) Commission and contract salesmen and hourly or per diem skilled and unskilled~~
12 ~~laborers working at the Georgia Industries for the Blind;~~

13 ~~(V) Positions specifically excluded from classified service by law or those of a purely~~
14 ~~policy-making or confidential nature as recommended by the department head and~~
15 ~~approved by the Governor after consultation with the commissioner;~~

16 ~~(W) Time-limited positions established for the purpose of conducting a specific study,~~
17 ~~investigation, or project subject to the approval of the commissioner;~~

18 ~~(X) Additional positions of unique functions as may be authorized by the~~
19 ~~commissioner;~~

20 ~~(Y) Positions in the class Major assigned to the Uniform Division of the Department~~
21 ~~of Public Safety;~~

22 ~~(Z)(i) The officers, officials, employees, and positions of the Department of Natural~~
23 ~~Resources, except those officers, officials, employees, and positions which are as of~~
24 ~~March 14, 1984, in fact in the classified service or which the commissioner designates~~
25 ~~as being in the classified service of the merit system unless placed in the unclassified~~
26 ~~service under another provision of this chapter. Except as provided in division (ii) of~~
27 ~~this subparagraph, unclassified employees of the Department of Natural Resources~~
28 ~~who are paid on an hourly basis shall continue not to be entitled to other benefits of~~
29 ~~employment, including, but not limited to, the accrual of annual and sick leave,~~
30 ~~membership within the Employees' Retirement System of Georgia, and inclusion~~
31 ~~under the health insurance plan for state employees as provided for in Article 1 of~~
32 ~~Chapter 18 of this title.~~

33 ~~(ii) Any provision of division (i) of this subparagraph to the contrary~~
34 ~~notwithstanding, unclassified employees of the Department of Natural Resources who~~
35 ~~are at work on or after July 1, 1993, who are paid on an hourly basis, and who are~~
36 ~~otherwise eligible to participate under Article 1 of Chapter 18 of this title may be~~
37 ~~included under the health insurance plan for state employees as funding is provided~~

and may accrue annual and sick leave; provided, however, that such eligibility for annual and sick leave shall not apply to any service occurring prior to July 1, 1993;

(AA) ~~The employees in the positions in the job classification of 'Clerk, Contingency' in the Department of Labor who are paid on an hourly basis. These employees shall continue not to be entitled to other benefits of employment, including, but not limited to, the accrual of annual and sick leave, membership within the Employees' Retirement System of Georgia, and inclusion under the health insurance plan for state employees as provided for in Article 1 of Chapter 18 of this title;~~

(BB) ~~The officers, officials, and employees of postsecondary technical schools which are operated by the Department of Technical and Adult Education, except those officers, officials, and employees already eligible to be covered by the state merit system by law or executive order;~~

(CC) ~~The 39 positions funded by the General Assembly during the 1992 legislative session for the Insurance Department for the purposes of securing accreditation of the Insurance Department by the National Association of Insurance Commissioners;~~

(DD) ~~The officers, officials, and employees of state schools which are operated by the State Board of Education, except those officers, officials, and employees already eligible to be covered by the state merit system by law or executive order;~~

(EE) ~~All positions filled on or after July 1, 1996, by new hires or rehires, except as provided in Code Section 15-11-24.3;~~

(FF) ~~Any position established on or after July 1, 1996, and~~

(GG) ~~Any classified employee who, on or after July 1, 1996, accepts employment in an unclassified position.~~

(16)(13) 'Working test' or 'working test period' means a probationary period of employment in a ~~class of covered positions~~ classified position during which the employee must demonstrate to the satisfaction of the appointing authority that he or she has the knowledge, ability, aptitude, and other necessary qualities to perform satisfactorily the duties of the position in which employed. The working test period shall apply to each promotion of a classified employee to a classified position ~~and interdepartmental transfer as provided in Code Section 45-20-17.~~ The commissioner may fix the length of the working test period for any ~~class job~~ at not less than six months nor more than 18 months exclusive of any time in nonpay status ~~or an unclassified position~~; provided, however, that the length of the working test period for troopers of the Uniform Division of the Department of Public Safety shall be 18 months. ~~The State Personnel Board shall provide guidelines to be used by appointing authorities in reviewing classified employees during the working test period.~~

(17)(14) 'Working test employee' or 'employee on working test' means a ~~covered~~ classified employee serving a working test period in the ~~class of positions~~ position in which he or she is employed; provided, however, that an employee serving a working test period following a promotion in the same department from a lower class in which he or she ~~held permanent status~~ had successfully completed a working test period shall retain ~~permanent status~~ appeal rights in the lower class until he or she ~~attains permanent status~~ successfully completes the working test period in the ~~class~~ job to which he or she has been promoted; provided, further, that an employee with five years or more of continuous state service who is serving a working test period following an interdepartmental transfer shall retain permanent status rights in the new department as provided in subsection (b) of Code Section 45-20-17."

SECTION 3.

Said chapter is further amended by revising Code Section 45-20-3, relating to duties and functions of the State Personnel Board, as follows:

"45-20-3.

(a)(1) The State Personnel Board shall prescribe the guidelines by which the state's personnel policies shall be administered. The board shall hold regular meetings ~~at least once each month and may hold additional meetings as may be required~~ as needed for the proper discharge of its duties.

(2) Members of the board shall receive no salary but shall receive the same expense allowance per day as that received by a member of the General Assembly for each day such member is attending meetings or performing official business for the board, plus reimbursement for actual transportation costs while traveling by public carrier or the legal mileage rate for the use of a personal automobile in connection with such attendance or official business.

(3) Three members shall constitute a quorum. Only the votes of a majority of the members present shall be necessary for the transaction of any business or discharge of any duties of the State Personnel Board, provided there is a quorum.

(b) It shall be the specific duty and function of the State Personnel Board:

(1) To represent the public interest in the improvement of personnel administration in all state departments;

(2) To determine appropriate human resource management goals and objectives ~~for the employees of the classified and unclassified service~~ and prescribe policies for their accomplishment;

(3) At public hearings, to adopt and amend policies, rules, and regulations effectuating the State Merit System of Personnel Administration and the state's personnel policies and

practices ~~with respect to employees of the classified and unclassified service~~ subject to approval by the Governor. ~~The rules and regulations of the State Personnel Board in effect on March 13, 1975, shall remain in effect until amended, changed, modified, or repealed by the board.~~ Notice of State Personnel Board meetings shall be released to all departments and agencies and shall be prominently posted at the office of the State Merit System of Personnel Administration at least ten days prior to each board meeting;

(4) Where the board deems a review appropriate, for employees of the classified service, to ensure that a review is afforded on ~~dismissals~~, a dismissal and other adverse personnel actions defined by the rules and regulations of the State Personnel Board, ~~and other purported violations of the rules and regulations in the several departments which are included in the classified service as well as in other matters under the board's jurisdiction.~~

All appeals determinations of the board shall be written and documented as to findings of fact, bases for decisions, and prescribed remedies;

(5) To assure the administration of state and federal laws relating to state personnel administration;

(6) To establish an annual budget covering all the costs of State Personnel Board operations, said budget to be incorporated as a component of the annual budget of the state merit system; and

(7) To promote public understanding of the purposes, policies, and practices of the State Merit System of Personnel Administration and to advise and assist the several state departments in fostering merit selection and securing the interest of institutions of learning and of civic, professional, and other organizations in the improvement of personnel standards under the state's personnel system."

SECTION 4.

Said chapter is further amended by revising Code Section 45-20-4, relating to the creation of the commissioner of personnel administration, as follows:

"45-20-4.

(a) There is created the position of commissioner of personnel administration. The commissioner shall be appointed by the Governor after consultation with the State Personnel Board subject to confirmation by the Senate. The Governor shall fix the compensation of the commissioner, who shall serve at the pleasure of the Governor.

(b) The duties and responsibilities of the commissioner shall be:

(1) To serve as executive secretary to the board, to attend meetings as directed by the board, and to provide such professional, technical, and other supportive assistance as may be required by the board in the performance of its duties;

1 (2) Consistent with board policy, to administer the operations of the state merit system
2 and to otherwise act in the capacity of chief executive officer of the state personnel
3 administration program;

4 (3) To submit to the Governor the rules and regulations adopted by the State Personnel
5 Board effectuating the state merit system. Such rules and regulations when approved by
6 the Governor shall have the force and effect of law and shall be binding upon the state
7 departments covered by this article and shall include provisions for the establishment and
8 maintenance of classification and compensation plans, the conduct of examinations, ~~and~~
9 ~~the establishment of registers of persons eligible for employment, the certification of~~
10 ~~eligible persons,~~ appointments, promotions, transfers, demotions, ~~separations, tenure,~~
11 ~~reinstatement,~~ appeals of classified employees, reports of performance, payroll
12 certification, ~~employee training,~~ and ~~all~~ other phases of personnel administration. Such
13 rules and regulations shall define and prohibit improper political activity by any
14 departmental employee of the State Personnel Board or any employee covered under the
15 terms of this article and shall provide that there shall be no discrimination for or against
16 any person or employee in any manner, to include, but not be limited to, hiring,
17 discharge, compensation, benefits, terms or conditions of employment, promotion, job
18 classification, transfer, privileges, or demotion because of political affiliation, religious
19 affiliation, race, creed, national origin, sex, age between 40 and 70 years, or physical
20 disability. Such rules and regulations shall conform to the minimum standards for merit
21 systems of personnel administration as specified by those federal departments from which
22 federal funds are obtained for use by the several state departments covered by this article.
23 Compensation plans and modifications thereto promulgated under the rules and
24 regulations of the commissioner shall become effective as adopted upon approval of the
25 director of the Office of Planning and Budget;

26 (4) To administer the rules and regulations and all other operational aspects of the state
27 merit system and to assure compliance therewith in all departments;

28 (5) To appoint and prescribe the duties of the merit system staff;

29 (6) To establish an annual budget covering all the costs of operating the State Merit
30 System of Personnel Administration including the State Personnel Board, and the costs
31 of administering such federal laws relating to personnel administration as the Governor
32 may direct including the Intergovernmental Personnel Act of 1970, and to determine an
33 equitable basis of prorating the annual costs among the several departments covered by
34 the State Merit System of Personnel Administration, provided that upon approval of such
35 budget by the Governor, the Governor shall be empowered to direct that the necessary
36 pro rata share of the several assessed departments concerned be made available for

1 expenditure by the state merit system in the same manner as appropriated funds are
2 expended by other departments of the state;

3 (7) To ensure compliance with all applicable state and federal statutes and regulations
4 concerning discrimination in employment, personnel administration, and related matters;

5 (8) To cooperate with appointing authorities in the administration of this article in order
6 to promote public service and establish conditions of service which will attract and retain
7 employees of character and ability and to increase efficiency and economy in
8 governmental departments by improving the methods of personnel administration with
9 full recognition of the requirements and needs of management; and

10 (9) To appoint and prescribe the duties of a deputy commissioner of personnel
11 administration who shall be the second highest executive officer in the state merit system
12 and the deputy executive secretary to the State Personnel Board; and to appoint and
13 prescribe the duties of such other assistant commissioners of personnel administration as
14 the commissioner deems appropriate. The deputy commissioner and the assistant
15 commissioners ~~shall be in the unclassified service and any of them~~ shall have the
16 authority to perform any duty assigned to the commissioner if delegated to them by the
17 commissioner."

18 SECTION 5.

19 Said chapter is further amended by revising Code Section 45-20-5, relating to the creation
20 of the Advisory Council for Personnel Administration, as follows:

21 "45-20-5.

22 (a) There is created ~~an Advisory~~ the Council for State Personnel Administration. The
23 objectives of the council shall be:

24 (1) To promote improvements in the personnel program in state government;

25 (2) To provide a forum for the interchange of information relating to the state personnel
26 program;

27 (3) To serve as a channel through which the operating agencies may express their
28 opinions on matters affecting state personnel;

29 (4) To seek equitable interpretation and application of the laws, rules, regulations,
30 policies, and procedures which affect state personnel management and administration;
31 and

32 (5) To strive for professional consensus consistent with the democratic process in all
33 actions which it may undertake.

34 (b) Membership in the council shall be ~~open to persons serving in technical, professional,~~
35 ~~supervisory, and executive capacities in personnel administration in all state departments~~
36 ~~subject to state merit system coverage~~ as defined in the bylaws of the council.

(c) The council is authorized to adopt bylaws which prescribe its organizational structure, officers and terms and conditions of office, meeting schedules, and such other organizational and operational procedures as are necessary for its lawful and effective functioning. As the professional association authorized to represent the interests of the several departments in the area of state personnel administration, the council shall through its offices have direct access to the board, the commissioner, the Governor, and the General Assembly to present grievances, suggestions, and recommendations."

SECTION 6.

Said chapter is further amended by revising Code Section 45-20-6, relating to the composition of classified and unclassified service, as follows:

"45-20-6.

(a) The classified service as defined by Code Section 45-20-2 shall consist of ~~all positions filled by agencies prior to July 1, 1996, except those included by law in the unclassified service and except as provided in Code Section 15-11-24.3.~~ Such classified positions shall be covered by the state merit system only those employees who were in the classified service on June 30, 1996, and who have remained in a classified position without a break in service since that date. Any officer or employee who occupies a ~~covered~~ classified position under the state merit system prior to July 1, 1996, or as provided in Code Section 15-11-24.3 shall remain in the classified service so long as such officer or employee shall remain in a ~~covered~~ classified position or as otherwise provided by law. Employees in the classified service shall have, upon completing a working test period, appeal rights as provided in Code Sections 45-20-8 and 45-20-9.

(b) The unclassified service as defined by Code Section 45-20-2 shall consist of all ~~positions~~ employees in the departments of state government not included in the classified service under this article ~~and these positions shall not be subject to the rules and regulations of the State Personnel Board.~~ Employees in the unclassified service shall be employees at will and shall not be afforded appeal rights.

(c) Exclusion from the classified service shall not exclude any employee, officer, or official from eligibility for membership or membership in the Employees' Retirement System of Georgia, provided that such employee, officer, or official is otherwise eligible for membership under Chapter 2 of Title 47.

(d) It is the intent of the General Assembly that employees in the classified service be required to serve a working test period before they obtain ~~merit system protection~~ rights of appeal and that the successful completion of this probationary period is part of the employment examination procedure. Each employee serving in a working test period shall be provided with management review by the appointing authority within ten calendar days

1 of the date the employee has completed one-half of the working test period or as near to
2 such date as is practicable. The management review shall include an evaluation of the
3 employee's progress and recommendations, if any, for corrective action. The provision of
4 management review pursuant to this subsection is solely for the purpose of promoting
5 efficient management and employee development and shall not be interpreted as granting
6 any additional rights to a working test employee. The State Personnel Board shall be
7 responsible for adopting and amending rules and regulations establishing the guidelines to
8 be used by the appointing authority in completing the management review pursuant to this
9 subsection."

10 SECTION 7.

11 Said chapter is further amended by revising subsections (a) and (b) of Code Section 45-20-8,
12 relating to the procedure for adverse action against permanent status employees, as follows:

13 "(a) ~~Permanent status~~ Classified employees who have successfully completed a working
14 test period may be dismissed from employment or otherwise adversely affected as to
15 compensation or employment status only if such action is taken in accordance with the
16 rules and regulations of the State Personnel Board governing adverse actions and appeals
17 for classified employees.

18 (b) This article is not intended to create a property interest in the job, but rather to create
19 only a procedure under which ~~permanent status~~ classified employees can be dismissed or
20 otherwise adversely affected. The procedure adopted for dismissing a ~~permanent status~~
21 classified employee from employment or otherwise adversely affecting his or her
22 compensation or employment status shall include, as a minimum, that the appointing
23 authority must provide the ~~permanent status~~ classified employee with reasons for the action
24 and an opportunity to file an appeal and request a hearing which may be held before either
25 the board or an administrative law judge; provided, however, that the hearing may be held
26 subsequent to the effective date of the dismissal or other purported adverse action;
27 provided, further, that the right to appeal shall not apply when persons are dismissed or
28 otherwise adversely affected as to compensation due to curtailment of funds or reduction
29 in staff when such action is in accordance with the rules and regulations of the State
30 Personnel Board."

31 SECTION 8.

32 Said chapter is further amended by revising subsections (a) and (b) of Code Section 45-20-9,
33 relating to the procedure for the conduct of hearings and appeals relating to adverse
34 personnel actions, as follows:

1 "(a) Any laws to the contrary notwithstanding, all hearings on dismissals, other adverse
2 personnel actions, and other purported violations of the rules and regulations ~~in the several~~
3 ~~departments which are included in the career service~~ as applied to classified employees
4 shall be instituted by filing a written appeal with the Office of State Administrative
5 Hearings upon such ground and in such form and under such procedure as may be
6 prescribed by rules and regulations of the office. The party appealing and the department
7 from whose action the appeal is taken shall be notified in writing within 15 days from the
8 filing of the appeal that an appeal has been filed and the time for which a hearing is
9 scheduled.

10 (b) The State Personnel Board, any member of the board, or an administrative law judge
11 shall have the authority to do the following in connection with any hearing on a dismissal
12 or other purported violation of the rules and regulations ~~in the several departments which~~
13 ~~are included in the career service~~: administer oaths and affirmations; sign and issue
14 subpoenas; rule upon offers of proof; regulate the course of the hearing, set the time and
15 place for continued hearings, and fix the time for filing briefs; dispose of motions to
16 dismiss for lack of the board's jurisdiction over the subject matter or parties or for any
17 other ground; dispose of motions to amend or to intervene; provide for the taking of
18 testimony by deposition or interrogatory; and reprimand or exclude from the hearing any
19 person for any indecorous or improper conduct committed in the presence of the board or
20 the administrative law judge."

21 SECTION 9.

22 Said chapter is further amended by revising Code Section 45-20-12, relating to the
23 implementation of public management certificate programs, as follows:

24 "45-20-12.

25 (a) The State Personnel Board and the State Merit System of Personnel Administration are
26 authorized and directed to implement a sequential series of management leadership
27 development courses in a certification program of study; and preparation, and examination
28 in order to ~~recognize professional and educational attainment in the field of public~~
29 ~~management in Georgia state government~~ enhance the capacity of supervisors, managers,
30 and executives to lead people at the direct, organizational, and strategic levels.

31 (b) The ~~certified public manager program~~ Governor's Executive Leadership Institute is
32 implemented by the State Personnel Board and the State Merit System of Personnel
33 Administration with the following objectives:

34 (1) To ~~encourage the recognition of management in state government as a profession~~
35 ~~established upon an underlying body of knowledge and to delineate a course of study and~~
36 ~~preparation by which such knowledge can be acquired~~ establish and maintain a state

government executive leadership development program to train and prepare current and future state government leaders;

(2) To foster and maintain higher developmental, educational, and ethical standards in the field and practice of public leadership and management; and

(3) To assist agencies of state government by establishing a more objective measure of a ~~manager's~~ leader's professional preparation and knowledge; ~~and~~

~~(4) To provide appropriate professional recognition of management development attainment by managers in Georgia state government."~~

SECTION 10.

Said chapter is further amended by striking Code Section 45-20-13, relating to penalties for violations of article or rules or regulations promulgated thereunder, as follows:

"45-20-13.

~~(a) Any person who knowingly and willfully violates this article or the rules and regulations promulgated under this article shall be guilty of a misdemeanor.~~

~~(b) Any person convicted of a misdemeanor under this article shall in addition to any punishment prescribed therefor be ineligible for appointment to or employment in a position in the state service for a period of five years after such conviction. Reserved."~~

SECTION 11.

Said chapter is further amended by striking Code Section 45-20-14, relating to rights of merit system officers and employees, as follows:

"45-20-14.

~~Unless otherwise provided in this article, each merit system officer or employee in a classified position affected by this article shall be entitled to all rights which he possessed as a merit system officer or employee in a classified position before March 13, 1975, including all rights of rank or grade, rights to vacation, sick pay and leave, payment for accumulated annual leave, rights under any retirement or personnel plan, and any other rights under any law or administrative policy. This Code section is not intended to create any new rights for any merit system officer or employee but to continue only those rights in effect before March 13, 1975. Reserved."~~

SECTION 12.

Said chapter is further amended by revising Code Section 45-20-15, relating to confidentiality of information received by staff in counseling, as follows:

"45-20-15.

(a) As used in this Code section, the term:

1 (1) 'Counseling session' means any discussions or meetings between a state employee ~~or~~
2 ~~other employee covered by the state merit system~~ and an official or other employee of the
3 state merit system; which ~~discussions or meetings~~ are conducted under an official
4 program established by the commissioner.

5 (2) 'Information' means any written document or material acquired or produced as a part
6 of a counseling session or the contents thereof and the contents of any discussions held
7 as a part of a counseling session.

8 (3) 'Program' means the employee relations counseling function established by the
9 commissioner under which ~~a covered~~ an employee is entitled to confidential counseling
10 with regard to job related problems.

11 (b) Except as provided in subsections (c), (d), and (e) of this Code section, information
12 received or developed by the merit system staff in performing its counseling functions shall
13 be maintained as confidential by the merit system and shall not be subject to disclosure by
14 the merit system unless such information relates directly to proof of the possible violation
15 of a criminal statute.

16 (c) Information may be disclosed if such disclosure is authorized, in writing, by all parties
17 to the counseling session in which the information was produced.

18 (d)(1) Nothing contained in this Code section shall be construed to prohibit any person
19 from disclosing any fact the knowledge of which was obtained independently of a
20 counseling session.

21 (2) The state merit system counselor may disclose information obtained in a counseling
22 session to a manager of the state merit system for the purpose of employee counseling.
23 Any such disclosure shall be confidential and the person to whom the information is
24 disclosed shall be subject to the restrictions contained in subsection (b) of this Code
25 section.

26 (e) Information received by a state merit system counselor during a counseling session;
27 which ~~information~~ indicates that unlawful activity is being conducted in the employee's
28 agency; may be disclosed to the commissioner. The commissioner may then notify the
29 commissioner of any agency involved, the Governor, or the Attorney General for
30 appropriate action.

31 (f) Any hearing before the board or one of its hearing officers regarding the dismissal of
32 a ~~state employee covered by the merit system~~ classified employee must be held in the
33 county in which the employee is employed unless all parties agree to another location."

SECTION 13.

Said chapter is further amended by revising subsections(a) and (b) of Code Section 45-20-16, relating to rules for accrual of leave, holidays and compensation for closing of state offices, as follows:

"(a) As a part of employee compensation, the State Personnel Board shall establish rules for the accrual and usage of leave and holidays and for compensation due to emergency closure of state offices or facilities for nontemporary employees ~~in the classified service~~. All agencies of the executive branch, exclusive of the Board of Regents of the University System of Georgia, shall provide for the accrual and usage of leave and holidays and for compensation due to emergency closure of state offices or facilities for nontemporary employees ~~in the unclassified service in the same manner and amount provided for employees in the classified service~~ accordance with State Personnel Board rules.

(b) Any employee ~~in the classified service~~ who has accumulated sick leave shall be authorized to utilize such sick leave in accordance with the criteria established in the rules and regulations of the State Personnel Board; provided, however, that whenever an employee is sick and absent from work, the employee may be required to report each day by telephone to the appropriate authority. An employee shall not be required to provide documentation for the use of less than 17 hours of sick leave in any 30 day period, unless the employee has demonstrated excessive or abusive use of sick leave. The State Personnel Board shall establish rules and regulations that define excessive or abusive use."

SECTION 14.

Said chapter is further amended by striking Code Section 45-20-17, relating to interdepartmental transfers, as follows:

"45-20-17.

~~(a) Prior to the interdepartmental transfer of any employee with less than five years of continuous state service, the department to which the employee is transferring may require the employee to execute a written statement acknowledging that a new working test period is required in the new department and that the employee retains no rights to any former class or employment in either department. If the department to which the employee is transferring fails to require the employee to execute the statement, the employee shall be considered a permanent status employee in the new class in the department to which the employee transferred.~~

~~(b) An employee with five years or more of continuous state service who accepts an interdepartmental transfer shall be required to serve a working test period in the class in the new department; provided, however, if the employee previously held permanent status in a class on a pay grade lower than the class to which the employee transferred in the new~~

~~department, the employee shall retain permanent status rights to the lower class in the new department.~~

~~(c) Notwithstanding any other provision of this Code section, a transfer between units of the Department of Human Resources, including county departments of health and county departments of family and children services, shall not be deemed to be an interdepartmental transfer subject to the provisions of this Code section. Reserved.~~

SECTION 15.

Said chapter is further amended by revising Code Section 45-20-19, relating to termination or elimination of classified positions or employees, as follows:

"45-20-19.

(a) This subsection shall apply whenever any department or agency proposes to eliminate one or more ~~classified~~ nontemporary positions or terminate the employment of one or more ~~classified~~ nontemporary employees through a reduction in force ~~under State Personnel Board rules~~. No position elimination or employment termination subject to this subsection may become effective until at least 30 days after the affected employee has been notified in writing by the department or agency. Such notice must contain at a minimum:

(1) A statement of the nature of the proposed action to be taken with respect to the affected employee;

(2) An explanation of the rights of the affected employee with respect to the proposed reduction in force, including any right of appeal, or other opportunities with respect to possible continued employment, any opportunities to apply for employment with any public or private party assuming the functions of the employee, or any other similar opportunities; and

(3) An explanation of the affected employee's rights and options with respect to his or her employment benefits, including but not limited to any right to continued participation in any retirement system or insurance plan.

(b) This subsection shall apply whenever any department or agency proposes to eliminate 25 or more ~~classified~~ nontemporary positions or terminate 25 or more ~~classified~~ nontemporary employees through a reduction in force ~~under State Personnel Board rules~~. At least 15 days prior to giving the employee notice required by subsection (a) of this Code section, the department or agency shall give written notice to the President of the Senate and the Speaker of the House of the proposed reduction in force. Such notice shall:

(1) Identify the facilities and operations to be affected and the estimated number of employees to be affected; and

(2) State the reasons for the proposed action.

(c) Subsections (a) and (b) of this Code section shall not apply to a reduction in force which must become effective immediately because the department or agency has insufficient funds available to pay the salaries of the affected employees."

SECTION 16.

Said chapter is further amended by revising Code Section 45-20-21, relating to performance management system provided for classified employees, as follows:

"45-20-21.

The State Personnel Board shall provide for a performance management system for the periodic review and rating of the quality and quantity of work performed by ~~classified~~ employees. All agencies of the executive branch, exclusive of the Board of Regents of the University System of Georgia ~~and of any agency which employed no classified employees as of July 1, 1996,~~ shall provide for the review and rating of the quality and quantity of work performed by employees ~~in the unclassified service in the same manner as employees in the classified service.~~

SECTION 17.

Said chapter is further amended by revising paragraph (1) of Code Section 45-20-90, relating to definitions relative to random drug testing of employees in high-risk jobs, as follows:

"(1) 'Employee' means any employee required to be certified under the provisions of Chapter 8 of Title 35 receiving a salary or hourly wage from any state agency, department, commission, bureau, board, or authority ~~and shall include all such certified employees whether or not such certified employees are covered by the rules and regulations of the State Personnel Board.~~ 'Employee' shall also include any certified employee working under a personnel contract to provide personnel services, including but not limited to medical, security, or transportation services to a state or other public agency."

SECTION 18.

Said chapter is further amended by revising Code Section 45-20-91, relating to determination of employees subject to testing, as follows:

"45-20-91.

(a) Employees working in high-risk jobs shall be subject to random testing for evidence of use of illegal drugs.

(b) The head of each state agency, department, commission, board, bureau, or authority shall determine those positions and groups of positions whose occupants regularly perform high-risk work where inattention to duty or errors in judgment while on duty will have the

1 potential for significant risk of harm to the employee, other employees, or the general
2 public. This Code section shall not be construed to include employees who do not
3 regularly perform high-risk work regardless of the fact that other employees in the same
4 classification do perform such high-risk work. ~~With regard to positions covered under the~~
5 ~~classified service of the State Merit System of Personnel Administration, the department~~
6 ~~head shall consult with the commissioner of personnel administration before making such~~
7 ~~determination and shall notify the commissioner of any such determination."~~

8 SECTION 19.

9 Said chapter is further amended by revising Code Section 45-20-92, relating to rules adopted
10 by the State Personnel Board, as follows:

11 "45-20-92.

12 ~~(a) For employees in the classified service of the State Merit System of Personnel~~
13 ~~Administration, the~~ The State Personnel Board shall adopt rules to establish:

14 (1) The portion of employees in the high-risk work group that may be selected at random
15 for testing at each testing period;

16 (2) Methods for assuring that employees are selected for testing on a random basis;

17 (3) Methods for assuring that privacy intrusions are minimized during collection of body
18 fluid specimens;

19 (4) Methods for assuring that any body fluid specimens are stored and transported to
20 testing laboratories at proper temperatures and under such conditions that the quality of
21 the specimens shall not be jeopardized;

22 (5) Methods for assuring that the identity of employees whose tests show the usage of
23 an illegal drug is limited to the staff who are entitled to this information; and

24 (6) The identification of those persons entitled to the information

25 and shall adopt such other rules as it may deem appropriate to carry out the purposes of this
26 article. The board may, in its discretion, delegate to the commissioner of personnel
27 administration such authority as appropriate to carry out the purposes of this article.

28 ~~(b) For all other employees, the department or agency head shall adopt policies to~~
29 ~~establish:~~

30 ~~(1) The portion of employees in the high-risk work group that may be selected at random~~
31 ~~for testing at each testing period;~~

32 ~~(2) Methods for assuring that employees are selected for testing on a random basis;~~

33 ~~(3) Methods for assuring that privacy intrusions are minimized during collection of body~~
34 ~~fluid specimens;~~

~~(4) Methods for assuring that any body fluid specimens are stored and transported to testing laboratories at proper temperatures and under such conditions that the quality of the specimens shall not be jeopardized;~~

~~(5) Methods for assuring that the identity of employees whose tests show the usage of an illegal drug is limited to the staff who are entitled to this information; and~~

~~(6) The identification of those persons entitled to the information and shall adopt such other policies as such department or agency head may deem appropriate to carry out the purposes of this article.~~

~~(c)~~ The commissioner shall establish and maintain a list of those laboratories qualified to conduct established drug tests and shall determine which illegal drugs will be the subject of testing; provided, however, that no laboratory shall be so certified unless that laboratory, on a daily basis, adds to its urine testing program a minimum of 10 percent blind test specimens."

SECTION 20.

Said chapter is further amended by revising Code Section 45-20-111, relating to analysis of positions warranting established test and testing requirements, as follows:

"45-20-111.

(a) The head of each agency, department, commission, bureau, board, college, university, institution, or authority shall ensure an analysis is completed on all jobs in his or her organization to determine those positions whose duties and responsibilities warrant conducting an established test for illegal drugs in accordance with the provisions of this Code section. The analysis must be completed by July 1, 1995. All jobs established after this date must undergo a similar analysis no later than six weeks after establishment. An applicant for a designated position shall undergo a drug test consistent with these provisions. ~~Organizations with positions covered under the classified service of the state merit system shall consult with the commissioner of personnel administration before making final determinations and shall provide the commissioner with a list of designated positions and accompanying documentation and analysis.~~

(b) An applicant for state employment who is offered employment in a position designated by the head of the agency, department, commission, bureau, board, college, university, institution, or authority as requiring a drug test shall, prior to commencing employment or within ten days after commencing employment, submit to an established test for illegal drugs. All costs of such testing shall be paid from public funds by the employing agency or unit of state government. Any such test which indicates the presence of illegal drugs shall be followed by a confirmatory test using gas chromatography/mass spectrometry analysis. If the results of the confirmatory test indicate the presence of illegal drugs, such

1 results shall be reviewed and interpreted by a medical review officer to determine if there
2 is an alternative medical explanation. If the applicant provides appropriate documentation
3 and the medical review officer determines that it was a legitimate usage of the substance,
4 the result shall be reported as negative. Any applicant who fails to provide an alternative
5 medical explanation shall be reported by the medical review officer as having a positive
6 test result. Any applicant offered employment who refuses to submit to an established test
7 for illegal drugs or whose test results are positive shall be disqualified from employment
8 by the state. Such disqualification shall not be removed for a period of two years from the
9 date that such test was administered or offered, whichever is later. The State Personnel
10 Board shall develop rules for the administration of the test and any verification procedures
11 ~~for positions covered under the state merit system.~~ Other covered units of state government
12 shall also develop rules governing these procedures. The results of such tests shall remain
13 confidential and shall not be a public record unless necessary for the administration of
14 these provisions or otherwise mandated by other state or federal law."

15 **SECTION 21.**

16 This Act shall become effective upon its approval by the Governor or upon its becoming law
17 without such approval.

18 **SECTION 22.**

19 All laws and parts of laws in conflict with this Act are repealed.